IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2447 OF 2004

WITH

CRIMINAL WRIT PETITION NO. 2448 OF 2004

Ahura Mazda Dairy Farm, etc. ... Petitioners

versus

Mrs. Jenny D. Hormusji and

another, etc. ... Respondents

...

Mr. Jahangir Khajotia, for the Petitioners in both Crl.W.Ps.

Mr. A.S. Gadkari, A.P.P., for the State.

...

CORAM : A.M.KHANWILKAR,J.

23rd December 2004

P.C.:

. The only contention, insofar as the merits is concerned, as canvassed before this Court, is that in the same complaint, proprietory concern as well as the proprietor by name cannot be prosecuted separately. In other words, either the complaint can proceed only against the

proprietory concern or the proprietor himself, as two convictions cannot be recorded against the same person. This aspect can be resolved by the trial Court at the time of final disposal of the complaint. Inasmuch the Applicant has appeared because his name appeared in person as proprietor; Even otherwise, he will have to make appearance for the proprietory concern. His appearance in the criminal action is, therefore, inevitable. If it is so, the grievance made before this Court can be duly considered by the trial Court at the appropriate stage. That cannot be ground for quashing the complaint.

. It is then argued that in any case the Revisional Court has exceeded jurisdiction in imposing costs against the Applicant for having filed two revision applications inspite of the decision of the Apex Court in Adalat Prasad's case. It is submitted that the Application for recall of process was filed by the Applicant much before the decision in Adalat Prasad's case coupled with the fact that the stay of further proceedings was not obtained and, therefore, the question of imposing costs in the amount of Rs.3,000/- in each revision application was

inappropriate. There is substance in this grievance. The petitions ought to succeed only to this limited extent - that the order requiring the Applicant to pay costs in the sum of Rs.3,000/- in each revision application is set aside. I am conscious of the fact that this order is being passed without issuing notice to the Respondent No. 1, who is the contesting Respondent. However, this order is being passed on the assumption that this part of the order will be acceptable to the Respondent No. 1. In case, the Respondent No. 1 has any objection even to this order, it will be open to him to ask for recall of this order as it is passed ex parte. In the circumstances, petitions are disposed of only by setting aside the order of the revisional Court requiring the Applicant to pay costs of Rs.3,000/- in each revision application. Ordered accordingly.

(A.M.KHANWILKAR,J.)